



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

OFFICE OF THE  
REGIONAL  
ADMINISTRATOR

August 17, 2016

The Honorable Derek Kilmer  
Member of Congress  
U.S. House of Representatives  
345 6<sup>th</sup> Street, Suite 500  
Bremerton, Washington 98337

Dear Congressman Kilmer:

Thank you for your letter dated July 25, 2016 to Nichole Distefano, Associate Administrator for the U.S. Environmental Protection Agency, regarding Discovery Bay restoration and oyster mortality. Ms. Distefano has asked that I respond to you on her behalf.

We understand that Tom J. Madsen contacted you concerning the impact that the dredging of Discovery Bay had on his 30-year shellfish bed operations. He believes that an Environmental Impact Statement should have been issued prior to dredging, and that not enough sampling and testing was conducted before the Army Corps of Engineers issued a nationwide permit for this work. He states that since the dredging occurred, a metallic looking substance has been isolated and it appears it is a toxin. He is extremely concerned about his livelihood and is requesting immediate intervention.

With respect to the level of environmental analysis required prior to taking a proposed action, the Corps of Engineers is the lead agency and conducts business according to their National Environmental Policy Act compliance regulations.<sup>1</sup> For the action described above, the Corps of Engineers issued a Nationwide Permit 27 for Aquatic Habitat Restoration and Enhancement Activities. With use of a Nationwide Permit, the Corps of Engineers determines that as long as the permit conditions are met, no further environmental assessment under the National Environmental Policy Act is required. In general, if the Corps of Engineers determines that an Environmental Assessment is appropriate, their public process is conducted under public notice. An Environmental Assessment would lead to a determination of whether there were potential significant environmental impacts. If no significant impacts were identified, a Finding of No Significant Impact would be issued. If significant impacts were identified an Environmental Impact Statement would be prepared.

The Environmental Protection Agency, Region 10 scientists have been coordinating with Mr. Madsen as well as other state and federal agencies, non-governmental organizations, and stakeholders since early July to determine how to work together to best address the toxin concerns outlined above. We are developing a plan to identify if a toxin is or was present that can explain Mr. Madsen's shellfish abnormal growth and mortality observations. If a toxin is identified, we will attempt to identify its origin.

Again, thank you for your letter to Ms. Distefano. If you would like additional information, please feel

---

<sup>1</sup> [http://planning.usace.army.mil/toolbox/library/ERs/ER200-2-2\\_4Mar1988.pdf](http://planning.usace.army.mil/toolbox/library/ERs/ER200-2-2_4Mar1988.pdf)

free to contact me or have your staff contact Brenda Bachman, Risk Evaluation Unit Manager, at (206) 553-1868 or [bachman.brenda@epa.gov](mailto:bachman.brenda@epa.gov).

Sincerely,

Dennis J. McLerran  
Regional Administrator